ETHEL BILOTTE

IBLA 86-136 Decided September 29, 1987

Appeal from a decision of the Colorado State Office, Bureau of Land Management, declaring unpatented lode mining claims abandoned and void. CMC-125802, CMC-129135.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Abandonment

   Where a mining claimant inadvertently omits the name and serial number of unpatented mining claims from the notice of intention to hold and there is no other means of identifying the claims on the document, BLM properly declares the claims abandoned and void for failure to comply with 43 CFR 3833.2. Although a filing may be supplemented by subsequent submission of information not required by statute without a statutory presumption of abandonment, there is no authority for amendment of the notice of intention to hold to include a previously omitted claim after the filing deadline.

APPEARANCES: Ethel Bilotte, pro se; Chiye R. Wenkam, Esq., Molycorp, Inc., for appellant.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Ethel Bilotte has appealed from an October 7, 1985, decision of the Colorado State Office, Bureau of Land Management (BLM), declaring appellant's Silver Streak No. 3 and Golden Nugget mining claims, CMC-125802 and CMC-129135 respectively, abandoned and void for failure to file with BLM during the 1980 calendar year either affidavits of assessment work or notices of intention to hold the claims as required by section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (1982). The claims are situated in Hinsdale County, Colorado.

In her statement of reasons for appeal, appellant explains that the Silver Streak No. 3 claim was one of a group of claims that she leased to Molycorp, Inc. (Molycorp), from January 1980 to January 1981. She states:

"Molycorp assured me they had filed all requirements for the year 1980 * * *." Molycorp, at the request of appellant, has filed with the Board a supplemental statement in support of this appeal, which will be discussed below. The Golden Nugget claim was not part of the group of claims leased to Molycorp. Appellant states that for this claim, she did the annual assessment work herself and filed an affidavit of assessment work with Hinsdale County.

We first address the BLM finding that the Golden Nugget claim was abandoned and void. Appellant has asserted the assessment work was completed and has provided a copy of the affidavit filed with the county recorder. She has not refuted the BLM finding that no affidavit of assessment work was filed with BLM in 1980.

Section 314 of FLPMA and 43 CFR 3833.2-1 require the owner of an unpatented mining claim located on public land to file either an affidavit of assessment work performed or a notice of intention to hold the claim with the proper BLM office prior to December 31 of each year. Failure to file one of these two instruments within the prescribed time period is conclusively deemed to constitute an abandonment of the mining claim. 43 U.S.C. § 1744(c) (1982); 43 CFR 3833.4. The Supreme Court, in United States v. Locke, 471 U.S. 84 (1985), found that the failure to make a timely filing, in and of itself, causes the claim to be lost. The Department has no authority to excuse lack of compliance or to afford any relief from the statutory consequences. See Lynn Keith, 53 IBLA 192, 196, 88 I.D. 369, 372 (1981). Further, filing or recording the required documents with the county or local recording district does not constitute compliance with the requirement that they be filed with BLM. Fern L. Evans, 88 IBLA 45 (1985).

In reference to the Silver Streak No. 3 claim, appellant asserts in her statement of reasons: "I had a five year lease-purchase agreement with Union 76 Molycorp so [I] felt confident they would perform all requirements necessary. Molycorp assured me they had filed all requirements for the year 1980 to both Hinsdale [County, Colorado,] and B.L.M." In a supplemental statement in support of appellant's appeal Molycorp explains:

> The Silver Streak No. 3 was located on October 4, 1979. Therefore, pursuant to 43 C.F.R. § 3833.2-1(d) a Notice of Intent to Hold should have been filed for the year 1980. [1/] When Molycorp filed a Notice of Intent to Hold the DV Claim Group, of

1/ Because the Silver Streak No. 3 mining claim was located after commencement of the assessment year beginning Sept. 1, 1979, appellant was not obligated to do actual assessment work during the 1980 calendar year. There was however an obligation to file a notice of intention to hold. The regulations at 43 CFR 3833.2-1(d) states that "in order to comply with the filing requirements of section 314 of [FLPMA], claimants of mining claims located after 12 o'clock noon on Sept. 1st of [the year of location] shall file with the proper BLM office a notice of intent to hold the mining claim in the first calendar year following its location. This does not apply to the claimant who elects to perform his assessment work early and wishes to record the assessment work."

> which the Silver Streak No. 3 is part, the required information for Silver Streak No. 3 was mistakenly left out.

Molycorp then asks: "Could not this oversight be corrected under 43 C.F.R. Section 3833.4(b), which allows a claimant to file information missing from a 43 C.F.R. Section 3833.2-3(b) filing?" 2/

[1] In addressing the issue as presented by Molycorp, we must first consider the two regulations it has cited. The regulation at 43 CFR 3833.2-3, titled "Contents for a notice of intention to hold claim or site," establishes what information must be included in the notice of intention to hold when a claimant elects to file such a notice. That regulation provides in relevant part:

> (b) A notice of intention to hold a mining claim or group of mining claims shall be in the form of * * *:
>
> (1) An exact legible reproduction or duplicate, except microfilm, of an instrument, signed by the owner of the claim of [sic] his/her agent, which was or will be filed for record pursuant to section 314(a)(1) of [FLPMA] in the local jurisdiction of the State where the claim is located and recorded setting forth the following information:
>
> (i) The Bureau of Land Management serial number assigned to each claim upon filing in the proper BLM office of a copy of the notice or certificate of location. Citing the serial number shall comply with the requirement in the Act to file an additional description of the claim;
>
> (ii) Any change in the mailing address, if known, of the owner or owners of the claim;

43 CFR 3833.2-3(b)(1). Thus, among other things, the notice of intention to hold must contain the BLM-assigned serial number of each claim covered by the filing. The other regulation referred to by Molycorp, 43 CFR 3833.4(b), permits the filing of certain information after the filing deadline. This regulation provides that "[t]he failure to file the information required in * * * [43 CFR] 3833.2-3(b) and (c) shall not be deemed conclusively to constitute an abandonment of the claim or site, but such information shall be filed within 30 days of receipt of a decision from the authorized officer calling for such information." Molycorp construes the provisions of 43 CFR 3833.4(b) as permitting the addition of an omitted claim after the filing deadline has passed.

2/ Consistent with its contention that a notice of intent to hold can be amended pursuant to 43 CFR 3833.4(b), Molycorp filed with the Colorado State Office, BLM, on Nov. 12, 1985, an "Amended Notice of Intent to Hold Unpatented Lode Mining Claims" identifying the Silver Streak No. 3 claim.

Molycorp's construction of these regulations does not withstand careful analysis. It is correct in stating that 43 CFR 3833.4(b) "allows a claimant to file information missing from" a notice of intention to hold. This regulation cannot, however, be read to permit amending a group filing to include omitted claims. First, Molycorp's contention fails to take into consideration that in each annual filing, the claimant must "fulfill the statutorily imposed requirement that he include 'a description of the claim sufficient to locate the claimed lands on the ground,' * * *. 43 U.S.C. § 1744(a)(2) (1982)." Arley R. Taylor, 86 IBLA 283, 284 (1985). As pointed out in Taylor, without some identification of the claim in the group filing, either by name or by BLM serial number, it is impossible for BLM to apply the filing to the omitted claim. This is consistent with Philip Brandl, 54 IBLA 343 (1981), where claimants listed the wrong name for one of their mining claims on their affidavit of annual assessment work and there was no other means of identifying the claim on the document. In that context, the Board affirmed a BLM decision declaring the claim abandoned and void for failure to comply with 43 CFR 3833.2. Although the Board has recognized that the failure of the notice of intention to hold to contain certain information required by regulation but not by statute may be treated as a curable defect not automatically resulting in a conclusive presumption of abandonment, see, e.g., Ronald Willden, 60 IBLA 173, 176 (1981), such cases are properly distinguished from the failure to make the filing required by statute, i.e., a notice of intention to hold or affidavit of assessment work identifying the claim(s) for which it is filed.

Further, the Department has no authority to permit amendment of the required filing to include omitted claims after the deadline for filing has passed. As the Board stated in Lynn Keith, supra:

> The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself, and would operate even without the regulations. See Northwest Citizens for Wilderness Mining Co., Inc. v. Bureau of Land Management, Civ. No. 78-46 (D. Mont. June 19, 1979). A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Thomas F. Byron, 52 IBLA 49 (1981).

53 IBLA at 196, 88 I.D. at 371-72; see United States v. Locke, supra.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

Will A. Irwin
Administrative Judge